

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DENNIS MONTGOMERY, an individual;
et al.

Plaintiffs,

ETREPPID TECHNOLOGIES, a Nevada
LLC; et al.,

Defendants

vs.

TERI PHAM,
Appellant,

and

MICHAEL FLYNN

Movant - Appellee.

No. 10-15958

D.C. No. 3:06-cv-00056-PMP-VPC
District of Nevada, Reno

DENNIS MONTGOMERY, an individual;
et al.

Plaintiffs,

DEBORAH A. KLAR,

Movant - Appellant

vs.

ETREPPID TECHNOLOGIES, a Nevada
LLC; et al.,

and

MICHAEL FLYNN

Movant - Appellee.

No. 10-15960

D.C. No. 3:06-cv-00056-PMP-VPC
District of Nevada, Reno

**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AND FOR REMAND TO DISTRICT COURT WITH
INSTRUCTIONS TO TERMINATE MAGISTRATE PROCEEDINGS**

Pursuant to Fed. R. App. Proc. 33 Appellee Michael Flynn, and Appellants Deborah Klar and Teri Pham (hereafter collectively referred to as the "Parties"), through their undersigned counsel, hereby move this Court for an order approving the settlement entered into between them and the law firm of Liner Grode Stein Yankelevitz Sunshine Regenstein & Taylor LLP (the "Liner Firm"). As required by that settlement, the Parties further move this Court for an order remanding these matters to the United States District Court for the District of Nevada with instructions to terminate with prejudice and take no further action with respect to or arising out of the magistrate proceedings against Deborah A. Klar, Teri T. Pham and the Liner Firm or the facts and circumstances on which they were based. The Parties base this motion upon the pleadings and papers on file herein, the confidential settlement agreement and the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The Parties are litigants in these consolidated appeals, which arise out of a March 31, 2009 order entered by Magistrate Judge Valerie Cooke purporting to sanction Klar, Pham, the Liner Firm, and Dennis Montgomery (the "Magistrate Proceedings") in the matter entitled Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)). The order was stayed by its own terms and later vacated by the District Court with respect to the Liner Firm, Klar, and Pham.¹

Flynn has also brought an action for malicious prosecution and other claims against Klar, Pham, and the Liner Firm, the appeal of which is pending in this Court as Case No. 11-16912

The District Court affirmed the sanctions order with respect to Dennis Montgomery on April 5, 2010, and entered judgment against him on July 8, 2010. A separate judgment was previously entered against Dennis Montgomery, Brenda Montgomery, and the Montgomery Family Trust on December 16, 2008 in the same matter, Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)). No appeal has been taken from any of these judgments. This Joint Motion and its associated settlement are not intended in any way to affect the validity and enforceability of these judgments in favor of Mr. Flynn.

(the "Malicious Prosecution Matter"). The District Court dismissed the claims asserted in the Malicious Prosecution Matter without leave to amend.

Pursuant to this Court's order, on March 16, 2012, the Parties and the Liner Firm conducted a global mediation with Circuit Court Mediator Ann Julius addressing both the Magistrate Proceedings and the Malicious Prosecution Matter. At the conclusion of the mediation, the Parties and the Liner Firm reached a global settlement encompassing both matters. The terms of the settlement are confidential, but the Parties are at liberty to advise this Court that the settlement resolves all litigation involving the Parties and the Liner Firm in both the Magistrate Proceedings and the Malicious Prosecution Matter. A key requirement of the settlement is that the Parties and the Liner Firm must dismiss the appeal of the Malicious Prosecution Matter, and obtain the termination, as requested in this motion, of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)).

The Parties and the Liner Firm wish to resolve their differences, and are content with the terms of the settlement. Accordingly, the Parties respectfully move this Court for its order approving the confidential settlement and remanding these matters to the district court with instructions to terminate with prejudice and take no further action with respect to or arising out of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar, Pham, and the Liner Firm.²

WHEREFORE, the Parties pray for the order of the Court:

- (1) approving the confidential settlement reached by the Parties and the Liner Firm;
- and

² The Parties and the Liner Firm will file a separate stipulation to dismiss related appeal No. 11-16912.

(2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with instructions to terminate with prejudice and take no further action with respect to or arising out of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar, Pham, and the Liner Firm. This order shall have no effect on any existing judgment entered in favor of Michael J. Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or otherwise.

Dated this _____ of May, 2012

JONES VARGAS

By: _____

Gary R. Goodheart, Esq.
Attorneys for Deborah A. Klar

Dated this _____ of May, 2012

McDONALD CARANO WILSON, LLP

By: _____

Debbie A. Leonard, Esq.
Attorneys for Teri T. Pham

Dated this _____ of May, 2012

CHRISTOPHER J. CONANT, ESQ.

By: _____

Christopher J. Conant, Esq.
Attorney for Michael Flynn

Dated this _____ of May, 2012

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

By: _____

Ellyn S. Garafolo, Esq.
*Attorneys for Non-Appealing Defendant Liner
Grode Stein Yankelevitz Sunshine Regenstreif &
Taylor LLP in Case No. D.C. No. 3:06-cv-00056-
PMP-VPC (D. Nev.)*

(2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with instructions to terminate with prejudice and take no further action with respect to or arising out of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar, Pham, and the Liner Firm. This order shall have no effect on any existing judgment entered in favor of Michael J. Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or otherwise.

Dated this 25 of May, 2012

JONES VARGAS

By:

Gary R. Goodheart
Gary R. Goodheart, Esq.
Attorneys for Deborah A. Klar

Dated this ____ of May, 2012

McDONALD CARANO WILSON, LLP

By:

Debbie A. Leonard, Esq.
Attorneys for Teri T. Pham

Dated this ____ of May, 2012

CHRISTOPHER J. CONANT, ESQ.

By:

Christopher J. Conant, Esq.
Attorney for Michael Flynn

Dated this ____ of May, 2012

LINER, GRODE, YANKELEVITZ, SUNSHINE,
REGENSTREIF & TAYLOR, LLP

By:

Ellyn S. Garafolo, Esq.
*Attorneys for Non-Appealing Defendant Liner,
Grove, Yankelevitz, Sunshine, Regenstreif & Taylor.*

(2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with instructions to terminate with prejudice and take no further action with respect to or arising out of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar, Pham, and the Liner Firm. This order shall have no effect on any existing judgment entered in favor of Michael J. Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or otherwise.

Dated this _____ of May, 2012

JONES VARGAS

By:

Gary R. Goodheart, Esq.
Attorneys for Deborah A. Klar

Dated this 24TH of May, 2012

MCDONALD CARANO WILSON, LLP

By:

Debbie Leonard
Debbie A. Leonard, Esq.
Attorneys for Teri T. Pham

Dated this _____ of May, 2012

CHRISTOPHER J. CONANT, ESQ.

By:

Christopher J. Conant, Esq.,
Attorney for Michael Flynn

Dated this _____ of May, 2012

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

By:

Ellyn S. Garafolo, Esq.
Attorneys for Non-Appealing Defendant Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP in Case No. D.C. No. 3:06-cv-00056-PMP-VPC (D. Nev.)

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Dated this _____ of May, 2012

JONES VARGAS

By:

Gary R. Goodheart, Esq.
Attorneys for Deborah A. Klar

Dated this _____ of May, 2012

McDONALD CARANO WILSON, LLP

By:

Debbie A. Leonard, Esq.
Attorneys for Teri T. Pham

Dated this 25th of May, 2012

CHRISTOPHER J. CONANT, ESQ.

By:

Christopher J. Conant, Esq.
Attorney for Michael Flynn

Dated this _____ of May, 2012

LINER, GRODE, YANKELEVITZ, SUNSHINE,
REGENSTREIF & TAYLOR, LLP

By:

Ellyn S. Garafolo, Esq.
Attorneys for Non-Appealing Defendant Liner,
Grove, Yankelevitz, Sunshine, Regenstreif & Taylor,

(2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with instructions to terminate with prejudice and take no further action with respect to or arising out of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar, Pham, and the Liner Firm. This order shall have no effect on any existing judgment entered in favor of Michael J. Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or otherwise.

Dated this _____ of May, 2012

JONES VARGAS

By: _____

Gary R. Goodheart, Esq.
Attorneys for Deborah A. Klar

Dated this _____ of May, 2012

McDONALD CARANO WILSON, LLP

By: _____

Debbie A. Leonard, Esq.
Attorneys for Teri T. Pham

Dated this _____ of May, 2012

CHRISTOPHER J. CONANT, ESQ.

By: _____

Christopher J. Conant, Esq.
Attorney for Michael Flynn

Dated this _____ of May, 2012

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

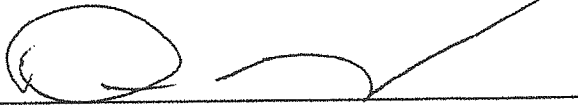
By: _____

Ellyn S. Garafolo, Esq.
Attorneys for Non-Appealing Defendant Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP in Case No. D.C. No. 3:06-cv-00056-PMP-VPC (D. Nev.)

1 Dated this 28 of June, 2012

LAXALT & NOMURA, LTD.


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3 By:


Daniel T. Hayward, Esq.
*Attorneys for Appellee Liner Grode Yankelevitz
Sunshine Regenstreif & Taylor, LLP in related
Appeal No. 11-16912 (the "Malicious Prosecution
Matter")*

7 Dated this 28 of June, 2012

LEMONS, GRUNDY & EISENBERG

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9 By:


David Grundy, Esq.
~~Alice Campos Mercado, Esq.~~
*Attorneys for Appellees Deborah A. Klar and Teri
T. Pham in related Appeal No. 11-16912 (the
"Malicious Prosecution Matter")*

14 Dated this _____ of June, 2012

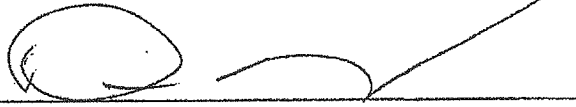
By:

Ronald Logar, Esq.
Eric A. Pulver, Esq.
LOGAR PULVER
- and -
Peter Chase Neumann, Esq.
- and -
Christopher J. Conant, Esq.
*Attorneys for Appellant Michael J. Flynn, Esq. in
related Appeal No. 11-16912 (the "Malicious
Prosecution Matter")*

1 Dated this 28 of June, 2012

LAXALT & NOMURA, LTD.

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3 By:


Daniel T. Hayward, Esq.
*Attorneys for Appellee Liner Grode Yankelevitz
Sunshine Regenstreif & Taylor, LLP in related
Appeal No. 11-16912 (the "Malicious Prosecution
Matter")*

4
5
6
7 Dated this _____ of June, 2012

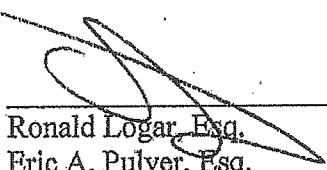
LEMONS, GRUNDY & EISENBERG

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9 By:

10 David Grundy, Esq.
Alice Campos Mercado, Esq.
*Attorneys for Appellees Deborah A. Klar and Teri
T. Pham in related Appeal No. 11-16912 (the
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11
12
13 Dated this 2nd of July, 2012

14 By:


Ronald Logar, Esq.
Eric A. Pulver, Esq.
LOGAR PULVER

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17 Christopher J. Conant, Esq.

18 *Attorneys for Appellant Michael J. Flynn, Esq. in
19 related Appeal No. 11-16912 (the "Malicious
20 Prosecution Matter")*